IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

WP(C).No. 1839 of 2007(R)

PETITIONERS:

E.N.SOMAN, AGED 54 YEARS,
S/O.NARAYANAN, "SANGEETHA" PEROL, NEELESWAR P.O.,
671314, KASARGOD DISTRICT.

BY ADV. SMT.M.A.VAHEEDA BABU,
SRI.JAGAN ABRAHAM M.GEORGE,
SRI.P.A.ANEESHA.

RESPONDENTS:
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1. **KERALA STATE ELECTRICITY BOARD**
   REPRESENTED BY ITS SECRETARY, VYDUTHI BHAVAN,
   THIRUVANANTHAPURAM.

2. **CHAIRMAN, KERALA STATE ELECTRICITY BOARD**
   VYDUTHI BHAVAN, THIRUVANANTHAPURAM.

3. **THE CHIEF ENINEER (HRM), KERALA STATE**
   ELECTRICITY BOARD , VYDUTHI BHAVAN,
   THIRUVANANTHAPURAM.

4. **DEPUTY CHIEF ENGINEER, ELECTRICAL CIRCLE**
   KERALA STATE ELECTRICITY BOARD, KASARGOD.

5. **MR.HAREESAN MOOTAMMAL,**
   ENQUIRY OFFICER & ASSISTANT EXECUTIVE ENGINEER,
   ELECTRICAL SUB DIVISION, KERALA STATE ELECTRICITY
   BOARD, KASARGOD.

BY ADV. SRI.K.S.ANIL, SC, KSEB,
SRI. ASOK M.CHERIYAN, SC, KSEB.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.1839/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE REPORT DTD. NIL SUBMITTED BY THE EXECUTIVE ENGINEER, ELECTRICAL DIVISION, KSEB, KANHANGAD.

EXT.P.2: COPY OF THE CHARGE MEMO DTD. 14/05/2002 ALONGWITH STATEMENT OF ALLEGATION SERVED ON THE PETITIONER.

EXT.P.3: COPY OF THE EXPLANATION DTD. 20/06/2002 SUBMITTED BY THE PETITIONER.

EXT.P.4: COPY OF THE ORDER DTD. 02/08/2002 ISSUED BY THE R.4. APPOINTING THE ENQUIRY OFFICER.

EXT.P.5: COPY OF THE ENQUIRY REPORT DTD. 31/12/2003.

EXT.P.6: COPY OF THE SHOW CAUSE NOTICE DTD. 18/03/2004 ISSUED BY THE R.4.

EXT.P.7: COPY OF THE EXPLANATION DTD. 03/05/2004 SUBMITTED BY THE PETITIONER.

EXT.P.8: COPY OF THE ORDER DTD. 05/06/2004 OF THE R.4. IMPOSING PUNISHMENT.

EXT.P.9: COPY OF THE APPEAL DTD. 08/08/2004 SUBMITTED BY THE PETITIONER BEFORE THE R.3.

EXT.P.10: COPY OF THE ORDER DTD. 16/08/2005 ISSUED BY THE R.3. DISMISSING THE APPEAL.

EXT.P.11: COPY OF THE APPEAL DTD. 25/11/2005 SUBMITTED BY THE PETITIONER TO THE R.2.

EXT.P.12: COPY OF THE ORDER DTD. 28/08/2006 OF THE R.2.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

ANTONY DOMINIC,J.

W.P (C) No. 1839 of 2007

Dated this the 6th day of August, 2007

J U D G M E N T

Petitioner is a Sub Engineer working under the 1st respondent. By Exhibit-P2 memo of charges he was proceeded against certain misconduct. It is alleged that while working as a Sub Engineer under Electrical Division, Mavungal he had committed serious irregularities in preparing estimate and effecting an agricultural service connection to the pump house of one of the consumers. The second charge alleged against him was that due to the aforesaid misconduct the Board had sustained huge loss and the 3rd charge was that he had committed grave dereliction of duty and misconduct by showing dishonesty in connection with Boards business. On receipt of Exhibit-P2 memo of charges and the statement of allegations, petitioner submitted Exhibit-P3 reply denying the allegations against him. The explanation submitted was found to be unsatisfactory and by Exhibit-P4 order an enquiry officer was appointed for conducting an enquiry against the petitioner. On conclusion of the enquiry, Exhibit-P5 enquiry report was submitted, in which, the enquiry officer found the petitioner

guilty of charge No.1 and absolved him in respect of charge Nos.2 and 3. However, it is seen that the disciplinary authority disagreed with the findings on charges 2 and 3 and issued Exhibit-P6 show cause notice proposing to impose punishment of barring his next two increment without cumulative effect and to recover from him the loss sustained amounting to Rs. 17,936/- with interest . Petitioner submitted his reply against Exhibit-P6 show cause notice, which was rejected and finally the aforesaid punishment was imposed on the petitioner. He filed an appeal before the Chief Engineer, which was rejected by Exhibit-P10 and review petition filed before the Chairman of the Board was also rejected by Exhibit-P12. It is in the aforesaid background seeking to quash Exts, P8, P10 and P12 that this writ petition has been filed by the petitioner.

2. Although various contentions have been urged by the petitioner in this writ petition, I think on a technical ground, the punishment imposed on the petitioner needs to be invalidated. I notice that in Exhibit-P5 report submitted by the enquiry officer, he had absolved the petitioner in respect of charges 2 and 3. However, the disciplinary authority without notice to the

petitioner disagreed with the findings of the enquiry officer in so far as these charges are concerned and issued Exhibit-P6 proposing to impose punishment. From the facts it is evident before disagreeing with the findings of the enquiry officer the disciplinary authority had not issued any show cause notice to the petitioner. It is settled law that when a finding in favour of the delinquent is sought to be disagreed, the principles of natural justice is requires that before such disagreement, the disciplinary authority must put the delinquent on notice and give him an opportunity to represent as to why he shall not disagree with the conclusions of the enquiry officer. In this case, such notice has not been issued and on the other hand the disciplinary authority disagreed with the conclusions of the enquiry officer and thereafter only issued Ext.P6. It is obvious that in the process, the disciplinary authority has violated the principles of natural justice and therefore the punishment imposed cannot be sustained. Consequently the orders in appeal and review also cannot be sustained.

3. In the result, Exhibits - P8, P10 and P12 will stand quashed. I clarify that if the respondents decide to impose punishment for 1st charge above, they will be free to do so and for that no further procedure need be complied with. I also make it clear that this judgment will not stand in the way of the disciplinary authority issuing notice to the petitioner indicating the tentative grounds for disagreeing with the findings of the enquiry officer and proceeding with the matter from that stage. With liberty to initiate fresh proceedings as above, quashing Exts. P8, P10 and P12, this writ petition will stand disposed of.

(ANTONY DOMINIC, JUDGE)

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/TRUE COPY/

P.A. TO JUDGE

K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007